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HedgerFriend, PLLC

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DISTRICT COURT
TERRY J. HALLIN

2019 MAY 7 PM 3 47

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BY _____
DEPUTY

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Attorneys for Plaintiff

MONTANA THIRTEENTH JUDICIAL DISTRICT COURT
YELLOWSTONE COUNTY

TERRY ROD,

Plaintiff,

vs.

BNSF RAILWAY COMPANY, a Delaware
corporation,

Defendant.

Cause No. V 19-0542

JUDGE Jessica T. Fehr

COMPLAINT AND DEMAND FOR
JURY TRIAL

COMES NOW Plaintiff Terry Rod ("Plaintiff"), by and through his undersigned
attorneys of record, Jon M. Moyers and Kathryn Kohn Troidahl, and for his cause of action
against the Defendant BNSF Railway Company ("Defendant"), alleges as follows:

1. Plaintiff is a resident of Glendive, Montana.
2. Plaintiff has physical restrictions or limitations related to a hereditary condition that affects his lower extremities.
3. Prior to Defendant's disability discrimination as alleged herein, Plaintiff had worked for Defendant as a machinist in its Glendive Diesel Shop since 1994. From

Complaint
Page 1

EXHIBIT

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1 approximately 2007 to May 2017, Defendant had reasonably accommodated Plaintiff's
2 physical restrictions and disability at its Glendive Diesel Shop.

3 4. Defendant is a Delaware corporation which operates as a common carrier by
4 rail, engaged in interstate commerce, conducting business in various states, including the
5 operation of a line of trackage, in Yellowstone County, State of Montana.

6 5. Defendant has a registered agent for service of process located in Yellowstone
7 County, State of Montana.

8 6. Defendant has a claims office in Yellowstone County, Montana.

9 7. Defendant's local managers who removed Plaintiff from work on May 8, 2017
10 are located in Glendive, Montana and Billings, Montana.

11 8. Venue is proper in Yellowstone County, Montana.

12 9. Jurisdiction is proper in Yellowstone County, Montana.

13 10. This claim is not barred by the statute of limitation or barred by any release.

14 11. On May 8, 2017, Defendant unlawfully removed Plaintiff from his machinist's
15 job at its Glendive Diesel Shop that he had worked for many years for Defendant. The adverse
16 employment decision was made despite the fact that Plaintiff's medical restrictions had not
17 changed for years; he had been previously approved for work by Defendant's Medical
18 Department and his physicians, and had undergone multiple occupational evaluations to verify
19 his ability to work; and, work was available, and continues to be available, for Plaintiff at
20 Defendant's Glendive Diesel Shop compatible with his medical disability and restrictions.

21 12. Defendant's conduct is in violation of the Montana Human Rights Act, Title 49,
22 Chapter 2, Part 3, Montana Code, and the Americans with Disabilities Act, 42 U.S.C. §§
23 12111, *et seq.*

1 13. Following Defendant's removal of Plaintiff from work on May 8, 2017, it failed
2 to place Plaintiff on a paid medial leave, failed to advance pay his wages, failed to timely pay
3 his accrued vacation and sick pay, and has failed to return Plaintiff to work.

4 14. To recover for Defendant's unlawful conduct, on October 30, 2017, timely filed
5 his Complaint against Defendant for disability discrimination in violation of the Montana
6 Human Rights Act and Americans with Disability Act with the Montana Human Rights
7 Bureau.

8 15. On April 30, 2018, the Montana Human Rights Bureau concluded its
9 investigation and "found reasonable cause to believe unlawful discrimination occurred."
10 Defendant thereafter refused to participate in conciliation.

11 16. On October 2-4, 2019, a contested case hearing was held.

12 17. Plaintiff has attempted to settle his case with Defendant to no avail. Defendant
13 has failed to compensate Plaintiff for his losses as a result of its disability discrimination,
14 including Plaintiff's lost earnings.

15 18. Under Montana law, Defendant had the duty to have attempted in good faith to
16 effectuate prompt, fair, and equitable settlement of the claim where, as here, there is reasonable
17 cause and/or liability is reasonably clear to support Defendant's unlawful conduct. Instead of
18 complying with its legal duty, Defendant forced Plaintiff to file a disability discrimination
19 complaint and has to date failed to pay Plaintiff's wages and/or return him to work.

20 19. Defendant's failure to resolve Plaintiff's claim is part of a pattern and practice of
21 Defendant to increase the time and expense of litigation for workers and thereby deprive them
22 of compensation under state and federal law.

23 20. By refusing to advance pay his lost wages and otherwise compensate him for his

1 losses, Defendant has violated the Montana Unfair Claims Practices Act (Sec 33-18-201, MCA,
2 *et seq.*; *Reidelebach v. BNSF*, 2002 MT 289; *O'Fallon v. Farmers Ins. Exch.*, 260 Mont. 233,
3 859 P.2d 1008 (1993)), including:

- 4 a. Failing to promptly respond to communications from Plaintiff; and/or,
5 b. Failing to implement and develop reasonable standards for the prompt
6 investigation of claims; and/or,
7 c. Failing to effectuate prompt, fair and equitable settlement of Plaintiff's claim;
8 and/or,
9 d. Failing to provide a reasonable explanation for the denial of claims or the failure
10 to offer a compromise settlement.

11 21. By its unlawful conduct and mismanagement, including but not limited to failing
12 to timely and properly resolve Plaintiff's claim, Defendant has also violated § 39-2-703, MCA;
13 *Winslow v. Montana Rail Link, Inc.*, 302 Mont. 289 (2001); *Haux v. Montana Rail Link, Inc.*,
14 322 Mont. 456 (2004).

15 22. As a consequence of Defendant's violation of the Montana Unfair Claims
16 Practice Act and § 39-2-703, MCA, Plaintiff has suffered compensatory damages for his unpaid
17 wages and compensation, plus pre-judgment interest; emotional distress; and other damages
18 provided for under the law.

19 WHEREFORE, Plaintiff TERRY ROD hereby requests that the court and jury award all
20 damages which are reasonable under the circumstances and allowed by law, as set forth herein.

21 PLAINTIFF DEMANDS TRIAL BY JURY.

22 KOHN LAW P.A.

23 By: 

24 Kathryn Kohn Troidahl
25 Jon M. Moyers
Moyers Law P.C.
Attorneys for Plaintiff

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DV 19-0542

JUDGE

Jessica T. Fehr

SUMMONS

TO: BNSF Railway Company

You are hereby summoned to answer the Complaint in this action which is filed in the office of this Court, a copy of which is herewith served upon you, and to file your answer and serve a copy thereon upon the Plaintiff's attorney within twenty-one (21) days after the service of this Summons, exclusive of the date of service; and in case of your failure to respond, judgment will be taken against you by default for the relief prayed for in the Complaint.

WITNESS my hand and seal of said Court this 7th day of May, 2019.

Terry Halpin
CLERK OF DISTRICT COURT

(Seal)

By:

Pam Olaus

Deputy Clerk